



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S33-ARN-3 [v.2]

Page 1 of 2

Comm. Sub. [YES]
Amends Title [YES]
First Edition

Date _____, 2011

Senator Clodfelter

1 moves to amend the bill on page 1, line 2-10, by rewriting those lines to read:

2
3 "AN ACT TO REFORM THE LAWS RELATING TO MEDICAL LIABILITY BY
4 PROVIDING LIMITED PROTECTION FROM LIABILITY TO THOSE REQUIRED BY
5 FEDERAL LAW TO PROVIDE EMERGENCY MEDICAL CARE, BY AUTHORIZING
6 THE BIFURCATION OF TRIALS ON ISSUES OF LIABILITY AND DAMAGES IN
7 CERTAIN ACTIONS, BY LIMITING THE AMOUNT OF NONECONOMIC
8 DAMAGES THAT MAY BE AWARDED, BY AUTHORIZING THE PERIODIC
9 PAYMENT OF FUTURE ECONOMIC DAMAGES IN LIEU OF A LUMP-SUM
10 PAYMENT, BY MODIFYING APPEAL BONDS IN MEDICAL MALPRACTICE
11 ACTIONS, AND BY CLARIFYING THAT COMPLAINTS ALLEGING MEDICAL
12 MALPRACTICE BY HEALTH CARE PROVIDERS MUST ASSERT THAT ALL
13 MEDICAL RECORDS AVAILABLE TO THE PLAINTIFF HAVE BEEN REVIEWED
14 BY AN EXPERT WITNESS.";

15
16 And on page 4, lines 38-39, by inserting the following between those lines:

17
18 **"SECTION 6.4.** G.S. 1A-1, Rule 9(j) reads as rewritten:

19 "(j) Medical malpractice. – Any complaint alleging medical malpractice by a health care
20 provider as defined in G.S. 90-21.11 in failing to comply with the applicable standard of care
21 under G.S. 90-21.12 shall be dismissed unless:

- 22 (1) The pleading specifically asserts that the medical care ~~has and all medical~~
23 records pertaining to the alleged injury then available to the plaintiff after
24 reasonable inquiry, have been reviewed by a person who is reasonably
25 expected to qualify as an expert witness under Rule 702 of the Rules of
26 Evidence and who is willing to testify that the medical care did not comply
27 with the applicable standard of care;
- 28 (2) The pleading specifically asserts that the medical care ~~has and all medical~~
29 records pertaining to the alleged injury then available to the plaintiff after
30 reasonable inquiry, have been reviewed by a person that the complainant
31 will seek to have qualified as an expert witness by motion under Rule 702(e)
32 of the Rules of Evidence and who is willing to testify that the medical care



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1 did not comply with the applicable standard of care, and the motion is filed
2 with the complaint; or
3 (3) The pleading alleges facts establishing negligence under the existing
4 common-law doctrine of res ipsa loquitur.

5 Upon motion by the complainant prior to the expiration of the applicable statute of
6 limitations, a resident judge of the superior court for a judicial district in which venue for the
7 cause of action is appropriate under G.S. 1-82 or, if no resident judge for that judicial district is
8 physically present in that judicial district, otherwise available, or able or willing to consider the
9 motion, then any presiding judge of the superior court for that judicial district may allow a
10 motion to extend the statute of limitations for a period not to exceed 120 days to file a
11 complaint in a medical malpractice action in order to comply with this Rule, upon a
12 determination that good cause exists for the granting of the motion and that the ends of justice
13 would be served by an extension. ~~The plaintiff shall provide, at the request of the defendant,~~
14 ~~proof of compliance with this subsection through up to ten written interrogatories, the answers~~
15 ~~to which shall be verified by the expert required under this subsection. These interrogatories do~~
16 ~~not count against the interrogatory limit under Rule 33. At the request of the defendant, the~~
17 ~~plaintiff shall furnish to the defendant, within 30 days, an affidavit from the expert certifying~~
18 ~~compliance with this subsection."~~ ;

19
20 and on page 4, lines 44-46, by rewriting those lines to read:

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22 "SECTION 8. This act becomes effective October 1, 2011. Sections 1, 3, 4, 5, and
23 6.4 apply to causes of action arising on or after the effective date. Sections 2 and 6 apply to
24 actions commenced on or after the effective date."

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SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____